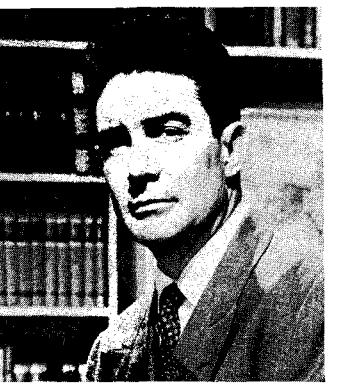
THE
Dan Smoot Report

Vol. 9, No. 33 (Broadcast 418) August 19, 1963 Dallas, Texas



DAN SMOOT

A NEW ATTACK ON THE CONNALLY RESERVATION

At the international conference in San Francisco (June, 1945) when the United Nations Charter was written, there was strong sentiment for a UN World Court which would have compulsory jurisdiction over member nations, but opposition to such a proposal was also strong. The compromise was a provision in Chapter XIV of the United Nations Charter establishing the International Court of Justice (generally called World Court) as a principal organ of the UN, to function in accordance with a so-called "Statute," annexed to the Charter and considered part of it.

The Statute of the International Court of Justice provides that all UN members automatically become members of the World Court, though none is required to accept its jurisdiction. Nations which do not accept jurisdiction have equal rights and powers with regard to the Court as nations which do accept its jurisdiction.[1]

The Court

The World Court consists of 15 judges, all elected, for nine-year terms, by a majority vote in the UN Security Council and by a majority vote in the UN General Assembly. The candidates are nominated by the UN Secretary General, from names submitted by national groups in the Permanent Court of Arbitration at the Hague. No particular qualifications are specified.

No nation (except the Soviet Union) can have more than one of its nationals on the World Court. The Soviets can have three judges on the court at one time, because of an agreement which President Franklin D. Roosevelt made with Stalin at Yalta in 1945 — recognizing the Soviet provinces of Byelorussia and the Ukraine as independent nations, entitled to full representation in all UN agencies.

THE DAN SMOOT REPORT, a magazine published every week by The Dan Smoot Report, Inc., mailing address P. O. Box 9538, Lakewood Station, Dallas, Texas 75214; Telephone TAylor 1-2303 (office address 6441 Gaston Avenue). Subscription rates: $10.00 a year, $6.00 for 6 months, $18.00 for two years. For first class mail $12.50 a year; by airmail (including APO and FPO) $14.50 a year. Reprints of specific issues: 1 copy for 25¢; 6 for $1.00; 50 for $5.50; 100 for $10.00 — each price for bulk mailing to one person. Add 2% sales tax on all orders originating in Texas for Texas delivery.

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Nine judges constitute a quorum for the World Court to do business, and a majority of the nine can render judgments. This means that five judges, on a court of 15, can make decisions. If the court fails to reach a decision, because it is evenly divided, the President of the court can cast an extra vote to break the tie. The President (who is elected by the court itself) has other broad powers: he controls hearings, directs administrative business, and appoints arbitrators and umpires. No judge can be removed from the court, except by unanimous decision of the other 14 judges. The court establishes its own rules, and, in cases where there is dispute, establishes its own jurisdiction. There is no appeal from a decision of the court.

Thus, the World Court is the most extraordinary judicial body in history. It is the only court (certainly in the history of western nations) ever empowered to determine not only its own rules and procedures but its jurisdiction. In the United States, Congress has absolute authority to determine (limit, enlarge, or abolish) the appellate jurisdiction of all federal courts (including the Supreme Court).[2] Only the World Court is empowered to make decisions from which there is *no relief.* In the United States, decisions of the Supreme Court cannot be appealed, but their effect can be set aside or nullified by Congress. The World Court is unique in that a minority of one-third of its members can render a decision. It is unique in that no outside authority can remove one of its judges, regardless of what he does. In the United States, Congress can impeach and remove from office any federal judge (including a Supreme Court justice) for bad behavior. No matter how bad the behavior of a World Court judge, he cannot be removed except by unanimous vote of the other 14 judges. The World Court is unique in that one of its judges has a double vote in cases so controversial that they divide the court evenly.

The most astonishing thing about the World Court, however, is that it can be staffed and controlled by nations which spurn its jurisdiction.

Connally's Reservation

The United Nations Charter (with the Statute of the International Court appended as an integral part) was signed at San Francisco on June 26, 1945. On July 28, 1945, the U. S. Senate (by ratifying the UN Charter as if it were a treaty) formally authorized United States membership in the UN. On October 24, 1945, the Soviet Union ratified the UN Charter (last of the five major powers to do so), and the United Nations formally came into being.

By joining the UN, the United States automatically became a member of the World Court. We were not, however, bound to accept its jurisdiction, unless our government filed a formal declaration of acceptance. The Truman administration demanded that this be done. Indeed, the drive to subject this nation to World Court jurisdiction began six months before the court came into existence. The court was formally organized May 6, 1946. Six months before (in November, 1945), Senator Wayne Morse, from Oregon, introduced a resolution giving Senate consent to United States acceptance of compulsory jurisdiction of the World Court. On December 17, 1945, Christian Herter (then a United States Representative, later Eisenhower's Secretary of State) introduced in the House a similar resolution.

On July 24, 1946, the Senate Foreign Relations Committee, by unanimous vote, reported Morse's resolution to the Senate for favorable action. The resolution resolved that,

" . . . the Senate . . . consent to the deposit by the President of the United States with the Secretary General of the United Nations of a declaration . . . recognizing as compulsory . . . the jurisdiction of the International Court of Justice in all legal disputes hereafter arising concerning —

"(a) the interpretation of a treaty;

"(b) Any question of international law;

"(c) The existence of any fact which, if established, would constitute a breach of an international obligation;

"(d) The nature or extent of the repara-

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tion to be made for the breach of an international obligation.

"*Provided,* That such declaration shall not apply to —

"(a) disputes the solution of which the parties shall entrust to other tribunals by virtue of agreements already in existence or which may be concluded in the future;

"(b) disputes with regard to matters which are essentially within the domestic jurisdiction of the United States. . . ."[3]

When the resolution came before the Senate for a vote — August 1, 1946 — conservatives raised a vital question: who will determine whether a matter is essentially within our national jurisdiction? What if the Soviets should bring charges against the United States for not admitting communist spies and saboteurs as immigrants? The United States might claim in vain that our immigration laws are exclusively our business. The World Court (on which we could never have more than one judge, while communists could have a majority) could decide that our immigration laws are international affairs. What if Panama should sue for ownership and control of our Panama Canal? The World Court could accept jurisdiction on the grounds that the matter affects all nations, and it could decide to give the Canal to Panama. What if we tried to decrease or terminate our aid to some foreign nation, and that nation sued us in the World Court, claiming that American foreign aid affects all nations and that all nations therefore must have a voice in determining our foreign aid policies?

The Morse-Herter crowd argued that we could trust the World Court. Conservatives were unwilling to place our national independence in the hands of 14 foreigners, all, or a majority, of whom might be communists.

Senator Tom Connally (Democrat, Texas) was Chairman of the Senate Foreign Relations Committee. He was eager for the United States to accept jurisdiction of the World Court. To allay conservative fears that the court might meddle in America's domestic affairs, Tom Connally proposed an amendment, or reservation, to the Morse World Court resolution. The Connally Reservation consisted of six words: *"as determined by the United States."*

On August 2, 1946, the Senate, by a vote of 62 to 2, approved the Morse World Court resolution, as amended by the Connally Reservation. Thus, as finally enacted, our formal declaration of acceptance of World Court jurisdiction provides that the United States will *not* accept compulsory jurisdiction of the court in "matters which are essentially within the domestic jurisdiction of the United States *as determined by the United States.*"

Efforts To Repeal

Internationalists in the American Bar Association immediately began a propaganda campaign against the Connally Reservation, trying to persuade the public and the Senate to accept the idea that the reservation must be repealed. In February, 1947, the American Bar Association, by a close vote, recommended repeal.

But massive and concerted propaganda efforts for repeal of the Connally Reservation did not begin until 11 years later. The first great wave of rhetoric broke around May 1, 1958 (the first "Law Day, U.S.A."), with a sudden spate of propaganda about "World Peace Through World Law." The propaganda continued with ever-rising volume for almost two years — all of it thundering the theme that the first step toward peace on earth must be repeal of the Connally Reservation.

In his State of the Union Message on January 9, 1959, President Eisenhower said he wanted a "re-examination of our own relation to the International Court of Justice." On March 24, 1959, Senator Hubert H. Humphrey (Democrat, Minnesota) joined by Senator Jacob K. Javits (Republican, New York) introduced a resolution to repeal the Connally Reservation. On April 13, 1959, Vice President Richard M. Nixon publicly recommended modification of the Connally Reservation.

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On October 11, 1959, the American Bar Association released a special committee report recommending repeal of the Connally Reservation.

The 86th Congress adjourned in 1959 without acting on the Humphrey resolution to repeal the Connally Reservation; but on November 17, 1959, President Eisenhower (in a letter to Senator Humphrey) endorsed the Humphrey proposal. Eisenhower said he hoped repeal of the Connally Reservation would give the world a more effective means "to prevent such brutal uses of force" as communists used in Hungary and Tibet. This Eisenhower remark (clearly implying that the Connally Reservation was partly responsible for communist bestiality in Hungary and Tibet) was applauded and repeated endlessly by internationalist liberals, none of whom tried to explain how the surrender of American independence to the World Court could influence the communist program of conquest by terror and mass murder.

In his State of the Union Message January 7, 1960, President Eisenhower again endorsed repeal of the Connally Reservation. The Senate Foreign Relations Committee (under the chairmanship of J. William Fulbright) scheduled hearings, obviously intending to hear only those witnesses who favored repeal. It seemed cut and dried: the committee would favorably report, and the Senate perfunctorily pass, the Humphrey resolution; and the Connally Reservation would be repealed before a brainwashed public realized what the reservation was.

But internationalists underrated the people. When word got out, the public was quick to realize that repeal of the Connally Reservation meant unconditional surrender to the World Court. Washington politicians were deluged with wires, letters, petitions and resolutions demanding that the Connally Reservation be retained. On March 30, 1960, Fulbright's Foreign Relations Committee tabled the Humphrey proposal to repeal the Connally Reservation — afraid to let it go to the Senate for a vote. In 1961, another resolution was introduced in the Senate, asking for repeal of the Connally Reservation, but this resolution did not even progress to the point of hearings.

Senator Long's Scheme

Propaganda for repeal of the Connally Reservation died down considerably after March, 1960 (when the Humphrey resolution died in committee); but efforts to surrender jurisdiction of American affairs to the World Court did not abate.

For example, in May, 1960, the State Department sent to the Senate, for its advice and consent, four UN Conventions (international agreements by UN members) concerning the Law of the Sea. It also sent a protocol agreement which would bind all signatory nations to accept compulsory jurisdiction of the World Court in all disputes arising from the Law of the Sea agreements. At the last moment, the Senate recognized this protocol agreement as a backstairs effort to circumvent and undermine the Connally Reservation. The protocol was defeated. But since that time, treaties between the United States and other countries often contain clauses giving the World Court jurisdiction over all disputes arising from such treaties. In time, if enough such treaties are made, the Connally Reservation will become meaningless, without formal repeal.[4]

Meanwhile, internationalists have devised a faster method of surrendering the independence and sovereignty of the United States, through unreserved acceptance of World Court jurisdiction over our national affairs. On June 20, 1963, United States Senator Russell B. Long (Democrat, Louisiana) introduced Senate Resolution 166 asking the President to sponsor in the United Nations a plan to reconstitute the World Court. The plan would:

(1) Give the World Court compulsory jurisdiction over all members of the United Nations;

(2) Give the Court itself power to overrule (by a vote of 10 of its 15 judges) the plea of any nation that a matter referred to the Court is purely a domestic affair of that nation;

(3) Eliminate the national citizenship of all judges and their families, making them supercitizens of all UN member nations ("United Nations citizens"), with diplomatic immunity everywhere;

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(4) Provide for the election of World Court judges for life, making their salaries tax free;

(5) Provide that future elections of judges would be held only to replace vacancies and that they be elected by a *plurality* of votes in the Security Council and the General Assembly rather than by a majority as is now the rule.[5]

The Long plan was devised by Eberhard P. Deutsch, an internationalist lawyer from New Orleans who has been in the forefront of American Bar Association propagandists for repeal of the Connally Reservation. Mr. Deutsch is presently chairman of the ABA's Standing Committee on Peace and Law through the United Nations.[5]

While the American Bar Association takes the lead in sponsoring this latest attempt to surrender our nation to the World Court, the Independent Bar Association leads opposition to the plan.

The Independent Bar Association was recently organized by a group of distinguished lawyers who feel that the American Bar Association no longer gives a respectful hearing to their views. Members of the Independent Bar want to keep the Connally Reservation as protection against World Court interference in the domestic affairs of our nation. They do not support Supreme Court interpretations which are converting the federal government into a centralized absolutism. They resent the use of American Bar Association funds, facilities, and prestige to support foreign aid schemes for land reform in Latin America. I commend to all thoughtful Americans (lawyers and non-lawyers alike) the World Court Issue (Summer, 1963, price $1.00) of *Law Today*, official journal of the Independent Bar Association (550 Fifth Avenue, New York 36, New York).

The Silly and The Sinister

Internationalist arguments for repeal of the Connally Reservation range from the ludicrous to the outright lie. What could be more ludicrous than the internationalist argument that repeal of the Connally Reservation is necessary "to assure other nations of our sincerity in calling for extension of law in world affairs"?[4] This adolescent attitude, that our great nation must do something not because it is intrinsically right but because it will make others like us, is stupid. After all the blood and treasure Americans have poured out to help people in foreign lands! If anyone retains doubt about us, he probably doubts our sanity in submitting to the rule of liberal internationalists who are willing to slaughter our youth, give away our wealth, and surrender our national independence for no apparent reason except to win a world-wide popularity contest — in which we are the only contestant.

On October 11, 1959, the Special Committee on International Law of the American Bar Association released its report entitled "Self-Judging Aspect of the United States' Domestic Jurisdiction Reservation with Respect to the International Court of Justice." In June, 1960, *The Reader's Digest* published an article by William Hard, entitled "The United States Is Impeding World Law." On July 11, 1960, *Life* published an editorial entitled "Vital Step Toward World Law."

All three of these pieces urged repeal of the Connally Reservation, so that the World Court can determine its own jurisdiction over any case involving the United States, by making its own determination of whether the case does or does not involve a purely domestic matter. All dishonestly implied that the Connally Reservation puts the United States in a dishonorable role of "self-judging" its own disputes with other nations — puts our nation in the category with a man who insists on sitting as judge to try his own case. The truth is, it would violate fundamental principles of the American Constitution and of American jurisprudence to permit *any* court to determine its own jurisdiction. Neither a nation nor an individual is being a "judge in his own case" when he questions the jurisdiction of a court to hear the case. Challenging the jurisdiction of a court, and getting cases thrown out of a court which does not have valid jurisdiction, are honored and ancient practices in American law.

In his *Reader's Digest* article (June, 1960), arguing that the United States is impeding world law by retaining the Connally Reservation, Wil-

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liam Hard makes a comparison between nations which fearlessly submit their disputes to the World Court and the United States, which goes into the court, if at all, with hands "considerably soiled," because it has resorted to a "subterfuge" in adopting the Connally Reservation. Hard documents this invidious comparison by saying:

"According to the Secretary of State Herter there are now only six countries which, having gone through the form of accepting the Court's compulsory jurisdiction, have nullified their acceptance by reservations. These countries are: the United States, Mexico, Liberia, the Sudan, the Union of South Africa, Pakistan."

That statement, attributed to a Secretary of State, is not true.

Only 35 of the 110 UN members of the World Court accept the jurisdiction of the court to any degree whatever. No communist nation accepts it. Of the 35 nations which do accept, the acceptances of the following 11 are not real: Canada, Colombia, Dominican Republic, El Salvador, Haiti, Luxembourg, New Zealand, Nicaragua, Panama, Paraguay, Uraguay. Before the present World Court was formed, these 11 nations accepted jurisdiction of the old League of Nations Permanent Court of International Justice. The old acceptances, presumed to apply to the present court, were filed without termination date — and can be canceled, by the nations themselves, at a moment's notice. In other words, these 11 nations can accept or reject World Court jurisdiction, as they please.

Of the 24 United Nations members which have *specifically* accepted jurisdiction of the *present* World Court, the following 13 nations also have reservations which enable them, by canceling at will, to accept or reject World Court jurisdiction as they please: Australia, Belgium, France, Great Britain, Honduras, India, Japan, Pakistan, Philippines, Portugal, South Africa, Sudan, Turkey. Of these 13 nations whose acceptances of World Court jurisdiction are virtually meaningless because they are cancelable on notice, 5 (Australia, France, India, Portugal, Great Britain) also have specified reservations far more restrictive on World Court jurisdiction than our Connally Reservation. Two of the 13 (South Africa and Sudan) have restrictions practically the same as our Connally Reservation.

Israel's adherence to World Court jurisdiction is so restrictive that it enables Israel to accept or deny jurisdiction, as Israel pleases.

Cambodia's adherence to World Court jurisdiction will be cancelable on notice by Cambodia after September 9, 1967.

The Netherland's adherence to World Court jurisdiction reserves to The Netherlands the right to exclude from the court's jurisdiction any disputes which The Netherlands may wish to settle by means other than by referral to the court.

Liberia and Mexico, in adhering to World Court jurisdiction, made reservations equivalent to our Connally Reservation.

Thus, of the 35 nations which have "accepted" World Court jurisdiction, 27 filed acceptances which enable them to accept or reject the court's jurisdiction as they please. This means that only 8 nations have accepted World Court jurisdiction as compulsory upon them in the settlement of international disputes. Those 8 nations are Free China, Denmark, Finland, Liberia, Mexico, Norway, Sweden, United States. Of these 8, three reserve the right to deny the court jurisdiction in cases that are strictly domestic affairs of those nations, and reserve the right to determine themselves what is a domestic affair: Liberia, Mexico, and the United States.

Liberia, Mexico, and the United States promise to accept World Court jurisdiction until six months *after* they give notice of cancellation. Denmark, Finland, Norway, and Sweden may cancel their adherences to World Court jurisdiction by giving notice six months *before* a specified date. Thus, these four Scandinavian nations can escape from the compulsory jurisdiction of the World Court more easily than the United States, Liberia, and Mexico can.

Free China is the *only* nation which adheres to World Court jurisdiction more completely (with

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less reservation) than the United States.

In presenting these evaluations of World Court jurisdiction over nations of the world, I am not stating my opinions. I am giving an exact analysis of the declarations of acceptance which those nations filed, and which are published in the 1958-1959 Yearbook of the International Court of Justice, pages 205-227. A few details of my analysis are based on an article in the Summer, 1963, issue of *Law Today*, pages 36-39.

To sum it up: internationalists who want to repeal the Connally Reservation and permit the World Court to assume unlimited jurisdiction over American affairs, dishonestly state that there are only six nations in the world which make restrictive reservations in their adherence to World Court jurisdiction, and that the United States is one of the six. The truth is, of the 110 United Nations members of the World Court, only 8 nations (the United States and 7 others) have accepted World Court jurisdiction as *compulsory* upon them. Of those 8, four can escape from compulsory jurisdiction more easily than the United States can; and 2 have accepted World Court jurisdiction on terms virtually identical with ours.

The Court We Can Trust

One dishonest argument of internationalists who want repeal of the Connally Reservation is that the World Court can be trusted not to assume jurisdiction wrongly or otherwise do anything harmful to the United States.

Look at the present World Court. Its 15 judges are from Argentina, Australia, Free China, France, Great Britain, Greece, Italy, Japan, Mexico, Panama, Peru, Poland, Soviet Union, United Arab Republic, United States.

Of the 15 nations represented on the court, 7 do not even make a pretense of accepting the court's jurisdiction, to any degree, in any type of case, or under any circumstances: Argentina, Greece, Italy, Peru, Poland, Soviet Union, United Arab Republic.

Of the other 8 judges on the World Court, 5 are from nations which reserve the right to reject or accept the court's jurisdiction as they please: Australia, France, Great Britain, Japan, Panama.

Of the 15 judges on the present World Court, 2 are from communist countries: Poland and the Soviet Union. The communist from Poland is

WHO IS DAN SMOOT?

Born in Missouri, reared in Texas, Dan Smoot went to SMU in Dallas, getting BA and MA degrees in 1938 and 1940. In 1941, he joined the faculty at Harvard as a Teaching Fellow in English, doing graduate work for a doctorate in American Civilization.

In 1942, he left Harvard and joined the FBI. As an FBI Agent, he worked for three and a half years on communist investigations in the industrial Midwest; two years as an administrative assistant to J. Edgar Hoover on FBI headquarters staff in Washington; and almost four years on general FBI cases in various parts of the nation.

In 1951, Smoot resigned from the FBI and helped start Facts Forum. On Facts Forum radio and television programs, Smoot spoke to a national audience, giving *both* sides of controversial issues.

In July, 1955, he resigned and started his present independent publishing and broadcasting business — a free-enterprise operation financed entirely by profits from sales: sales of *The Dan Smoot Report*, a weekly magazine; and sales of a weekly news-analysis broadcast, to business firms, for use on radio and television as an advertising vehicle. The *Report* and the broadcast give only *one* side in presenting documented truth about important issues — the side that uses the American Constitution as a yardstick. The *Report* is available by subscription; and the broadcasts are available for commercial sponsorship, anywhere in the United States.

If you think Dan Smoot is providing effective tools for Americans fighting socialism and communism, you can help immensely — by helping him get more customers for his *Report* and broadcasts.

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President of the court, entitled to a double vote in cases when the court is evenly divided, and he is endowed with other exceptional powers.

The United States national on the World Court is Dr. Philip C. Jessup (nominated by President Eisenhower in November, 1960). In the past, Dr. Jessup had official connections with at least 8 notorious communist front organizations, including the most notorious of all, the Institute of Pacific Relations; and Dr. Jessup was closely associated with such known communist agents as Alger Hiss, Harry Dexter White, Frederick Vanderbilt Field, and Lauchlin Currie. Jessup's record is, in fact, so bad that the Senate, in 1951, refused to confirm his nomination (by President Truman) as Ambassador to the UN.

What To Do

It is a pity that the political leadership of the United States has betrayed us into having anything whatever to do with the World Court. The Senate should repeal the 1946 Morse resolution of acceptance and *get us out.* It is unlikely that the public will exert enough pressure on the present Senate to accomplish this; but surely the public will storm the Senate with demands that it defeat the Long Resolution (Senate Resolution 166) introduced on June 20, 1963, asking for reorganization of the World Court.

Until we get out of the court altogether, we should retain the protection of the Connally Reservation and block all efforts to circumvent it.

FOOTNOTES

(1) For extensive discussion of the history and meaning of the World Court, by prominent legal scholars, see the World Court Issue of *Law Today* (Summer, 1963), official Journal of the Independent Bar Association, 550 Fifth Avenue, New York 36, N. Y.; also three issues of this *Report* on "World Court and World Law," July and August, 1960.

(2) Article III, Section 2, Clause 2 of the Constitution of the United States says, in part: "In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

(3) *Review of the United Nations Charter: A Collection of Documents,* Senate Document No. 87, January 7, 1954, pp. 108-9

(4) *Law Today,* Summer, 1963, p. 6, p. 21, p. 15

(5) Speech of U. S. Senator Russell B. Long, *Congressional Record* (daily), June 20, 1963, pp. 10624-33.

WHAT YOU CAN DO

Washington officialdom uses your taxes for programs that are creating vast cesspools of waste and corruption — and dragging our Republic into the quicksands of socialism. What can you do about it?

You can help educate and arouse the people who elect men responsible for harmful programs of government. When enough other Americans know and care as you do, political action to restore our Republic will come.

If *The Dan Smoot Report* was instrumental in bringing you to the point of asking what *you* can do about saving the country from mushrooming big government, here is a checklist for you: Have you urged others to subscribe to the *Report?* Have you sent them reprints of a particular issue of the *Report?* Have you shown them a Dan Smoot film? Have you ever suggested a Bound Volume of *The Dan Smoot Report* for use by speakers, debaters, students, writers? Have you read and passed on to others any of the Dan Smoot books — *The Invisible Government, The Hope Of The World, America's Promise?*

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